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January 20, 2000

BY HAND DELIVERY

Amy Swanson, Esq.  
Enforcement Attorney  
U.S. Environmental Protection Agency  
Region VIII, - Enforcement Legal  
999 18<sup>th</sup> St., Suite 700  
Denver, CO 80202-2405

Re: Response of Hecla Mining Company to RCRA § 3013 Order -  
in the Matter of Hecla Mining Company, Docket No. RCRA-8-  
99-06

Dear Ms. Swanson:

We are writing on behalf of our client, Hecla Mining Company, the named Respondent (Hecla) in the referenced unilateral administrative order (the Order) issued on September 22, 1999, by the United States Environmental Protection Agency (EPA) with respect to a solid waste and mineral extraction/beneficiation waste impoundment on leased tribal land within the external boundaries of the Shivwits Band of Paiute Indian Reservation, near the town of St. George, Washington County, Utah (the Site). This letter has also been delivered by hand to the U.S. EPA Regional Hearing Clerk in Denver on January 20, 2000, and Hecla hereby requests that this document be made part of the administrative record for the Site.

While Hecla is providing this written response to the Order, Hecla expressly (i) denies liability under the Order and (ii) reserves all rights and defenses that are now or may be hereafter available to it in connection with the Site in general, or the Order in particular. Hecla further reserves the right to raise any and all defenses available to it at any time in this proceeding or related proceedings, including but not limited to any such time as EPA may seek enforcement of the Order.

Ms. Amy Swanson, Esq.  
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## **I. STATEMENT OF INTENT TO INITIALLY COMPLY WITH THE ORDER**

Without waiving its defenses and objections to the Order, set forth in part below, Hecla hereby gives notice that it intends to initially comply with certain requirements of the Order. Accordingly, enclosed are proposed sampling and analysis work plans for soil and leachate/run-off required by paragraphs 60 and 61 of the Order, prepared on behalf of Hecla by its contractor, Shepherd Miller, Inc.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

EPA's issuance of the referenced Order to Hecla was preceded by an EPA inspection of the subject waste impoundment, known as "Pond 2," located adjacent to the Apex facility of OMG Americas, Inc. ("OMG Apex") in November of 1998. That EPA inspection was followed by requests for information by EPA staff directed to Hecla, in January and June of 1999. Hecla has cooperated with and timely responded to EPA with all available and relevant information in its possession, custody or control. Hecla has also participated in several telephone conference calls with EPA representatives since issuance of the Order, and has requested an informal conference with EPA which is currently being scheduled.

While Hecla representatives have acknowledged EPA's concerns expressed in prior phone conversations with respect to the environmental condition of Pond 2, and have also indicated Hecla's intention to ultimately reclaim Pond 2 in a manner consistent with current industry practice, Hecla has strenuously objected to EPA's allegations in the Order that Pond 2 contains RCRA hazardous waste and constitutes a "substantial hazard" to human health or the environment. These factual disputes between Hecla and EPA are at the core of many comments, objections and defenses raised in this response.

### **EPA's Prior Regulatory Determination Letter Specific to the Apex Facility**

As EPA has noted in the Order at paragraph 22, Hecla submitted a Part A RCRA permit application for the Apex facility to EPA in February of 1990. The Order fails to disclose, however, that such application was filed due to uncertainty concerning the EPA's January 1990 final rule concerning RCRA regulation of mineral extraction and beneficiation wastes. 55 Fed. Reg. 2322, 2353 (Jan. 23, 1990) (codified at 40 C.F.R. § 261.4(b)(7)). Shortly following such application, Hecla sought and obtained EPA's written

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confirmation of Hecla's conclusion that the Gallium/Germanium ("GA/Ge") operations described in its letter constituted mineral beneficiation, and thus did not require a RCRA permit. See May 8, 1990 letter from Davis, Graham & Stubbs to Terry Anderson and Sylvia Lowrance (copy attached as Exhibit 1); July 19, 1990 letter from Robert L. Duprey, EPA, to Davis, Graham & Stubbs (copy attached as Exhibit 2) (confirming beneficiation status of described Apex operations). In reliance on EPA's July 1990 regulatory determination letter, Hecla withdrew its Part A RCRA application for the Apex facility. This regulatory history is pertinent to EPA's allegations that RCRA hazardous waste is present in Pond 2 because, to the extent EPA contends that waste came from Ga/Ge operations, EPA has already confirmed the RCRA exempt status of such materials pursuant to the Bevill Amendment and EPA's 1990 final rule.

### III. COMMENTS AND DEFENSES

As an initial matter, Hecla objects to the Order to the extent that it requires Hecla to raise its defenses any earlier than the time that Hecla may fail or refuse to comply with the Order, at which time the United States Government may seek enforcement and civil penalties under 42 U.S.C. Section 6934(e). Therefore, Hecla reserves its right to raise additional defenses to the Order or to provide additional evidence in support of any defense in the future, and to have such additional defenses and/or evidence made a part of the administrative or other record of this proceeding or any related proceeding(s).

Without waiving its rights as stated above, Hecla asserts the following comments and defenses to the Order.

A. EPA Lacks Jurisdiction to Issue or Enforce the Order due to the Absence of RCRA Hazardous Waste in Pond 2

With respect to the alleged presence of RCRA hazardous waste in Pond 2, Hecla relies in part on a prior regulatory determination letter by EPA itself in asserting that most of Pond 2's contents are exempt from RCRA regulation as hazardous waste under the so-called "Bevill Amendment" because they are Hecla and St. George Mining Co. wastes from mineral extraction and beneficiation. See Exhibits 1 and 2 attached. Hecla also relies on records currently available to it and previously produced to EPA, as well as the affidavit testimony of knowledgeable current and former employees, attached hereto, in asserting that Hecla employed procedures in the

conduct of its Cobalt recovery operations that precluded the disposal of RCRA hazardous wastes in Pond 2. See Exhibits 3 and 4.

EPA's findings in the Order with respect to the detection of various hazardous constituents in or near Pond 2 at levels in excess of the TCLP standard are wholly deficient in documenting the alleged presence of RCRA hazardous waste in Pond 2. The presence of those constituents at such levels is completely consistent with the known disposal of Ga/Ge residues and wastes in Pond 2 which EPA itself has determined are beneficiation wastes, and thus exempt from RCRA regulation as hazardous wastes. Under these circumstances, EPA should withdraw the Order in its entirety.

**B. The Order is Unenforceable Because A Substantial Hazard to Human Health or Environment Does Not Exist**

Section 3013 of RCRA provides the EPA with the authority to issue an order requiring an owner or operator of a facility at which hazardous waste is present or has been stored, treated, or disposed, or is being released, to conduct monitoring, testing, analysis and reporting concerning the facility, and to file a civil action to have the court require compliance with such an EPA order. 42 U.S.C. § 6934. In the instant case, insufficient evidence of the "substantial hazard" allegedly posed by Pond 2 exists in the administrative record to justify issuance of the Order. With respect to the EPA alleged "substantial hazard," Hecla has relied on the fenced status of Pond 2 to prevent livestock from watering at the decant ditch or ponds associated with Pond 2, as well as the complete absence from the Order or the administrative record of any other substantial hazard to human health or the environment posed by Pond 2. Because Hecla believes the EPA's factual allegations concerning the presence of hazardous waste and a substantial hazard to be incorrect, the EPA is without jurisdiction to proceed against Hecla under the Order, or even to have issued the Order. See 42 U.S.C. § 6934; Issuance of Administrative Orders Under Section 3013 of the Resource Conservation and Recovery Act, Sept. 26, 1984 (EPA Guidance Document). Because the "substantial hazard" requirement has not been satisfied, the Order is unenforceable.

**C. Portions of the Order Related to Additional Work or Modifications to Work are Unenforceable**

Hecla objects to the vague and ambiguous provisions of paragraph 63 of the Order to the extent they purport to provide EPA with the authority to require Respondents to perform additional

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unspecified work at the Site. In order for Hecla to determine whether it has a good faith basis for not performing additional work under the Order, the additional work must be defined. In the absence of such definition, it is impossible to determine whether the work is necessary to protect human health or the environment, or to address a substantial hazard, and whether such work is feasible. To deem Hecla to be in violation of the Order for failure to agree to perform unspecified future work would deny Hecla a meaningful opportunity to be heard about that work, and would violate Hecla's due process rights. To require Hecla to perform additional unidentified work or to modify work previously performed without information regarding the nature of the work and the circumstances under which it will be required is arbitrary and capricious, an abuse of discretion, and not in accordance with RCRA Section 6934.

Hecla further objects to any and all additional work to the extent that such work is not necessitated by, or a material component of, a rational plan to abate a substantial hazard to human health or the environment posed by the presence or release of RCRA hazardous waste.

**D. Portions of the Sections on Access to Information and Data/Documents Availability and Record Preservation Are Unenforceable**

Hecla objects to those portions of the Order which purport to allow EPA access to information beyond that afforded by RCRA. EPA lacks authority to demand access to documents or information other than as provided by statute. Section 84 of the Order purports to require Hecla to provide "data, records and documents . . . which relate in any way to activities at the Site or to the implementation of this Order..." That requirement goes far beyond the authority provided by RCRA Section 3007, 42 U.S.C. § 6927, which only authorizes EPA to require the production of information or documents relating to hazardous wastes. Because the record does not support EPA's allegation that RCRA hazardous waste is present in Pond 2, EPA lacks authority to request the breadth of information which the Order purports to address. Therefore, Hecla objects to this Section of the Order because it purports to provide EPA with authority in excess of that afforded by RCRA and because it is overly broad, unduly burdensome, ambiguous, and not capable of exact definition.

Hecla further objects to production of any documents protected by the attorney-client privilege, work product doctrine or other

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similar privilege or doctrine, on the grounds that requiring such production is contrary to law.

**E. The Provisions Pertaining to the Respondents' Opportunity to Confer with EPA Violate Hecla's Due Process Rights**

Section XXVI of the Order violates Hecla's due process rights because the Section fails to provide Hecla with a meaningful opportunity to contest the validity of the Order. The procedure established in the Order -- an informal conference with EPA -- fails to provide Hecla with a meaningful opportunity to establish defenses to the Order or any specific requirements imposed by EPA thereunder. The fundamental due process interest at stake with respect to this Order is Hecla's opportunity "to be heard at a meaningful time and in a meaningful manner." See, e.g., Aminoil Inc. v. United States, 646 F. Supp. 736, 747 (D. Kan. 1985) (citations omitted); Solid State Circuits v. EPA, 812 F.2d 383 (8th Cir. 1987) ("to pass constitutional requirements, the standard must provide parties served with the EPA cleanup Orders a real and meaningful opportunity to test the validity of the Order"). The procedures provided by the Order do not provide Hecla with the meaningful opportunity required by law. Because the Order denies Hecla due process, it is invalid and unenforceable.

**F. Additional Defenses**

A. Hecla has not caused or contributed to the "substantial hazard" alleged by EPA, and is therefore not liable to EPA under RCRA.

B. The United States is equitably estopped from asserting Hecla's RCRA liability for operations identified in the EPA's July 1990 regulatory determination letter as being exempt from regulation under Subtitle C of RCRA. Hecla has relied on that determination in its disposition of materials now located in Pond 2, and it would be inequitable and contrary to public policy to allow EPA to now take an enforcement position contrary to that written regulatory determination.

**IV. CONCLUSION**

Without waiving its defenses and objections to the Order, as set forth herein or as may be raised hereafter, Hecla submits this response to EPA's 3013 Order and the enclosed proposed work plans.

Ms. Amy Swanson, Esq.  
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Dated: January 20, 2000

Respectfully submitted,

Dean C. Miller

John R. Jacus

Dean C. Miller

for

DAVIS, GRAHAM & STUBBS LLP

Attorneys for Respondent  
Hecla Mining Company

cc: John N. Galbavy, Esq. (U.S. Mail)  
Regional Hearing Clerk, (Hand Delivery)  
EPA Region VIII

4590002  
L2-1

**EXHIBIT 1**



DAVIS, GRAHAM & STUBBS

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May 8, 1990

VIA HAND DELIVERY

Mr. Terry Anderson  
U.S. Environmental Protection Agency,  
Region VIII  
999 Eighteenth Avenue, Suite 600  
Denver, Colorado 80202

Ms. Sylvia Lowrance  
Director, Office of Solid Waste  
U.S. Environmental Protection Agency  
401 M Street S.W., Room M 2101 (OS-300)  
Washington, D.C. 20460

Re: Hecla Mining Company - Apex Facility

Dear Mr. Anderson and Ms. Lowrance:

We are writing on behalf of our client, Hecla Mining Company ("Hecla"), concerning the regulatory status under the Resource Conservation and Recovery Act of its Apex Mill facility (the "Facility") near St. George, Utah. The Facility uses ore from the nearby Apex Mine for the recovery of copper, germanium and gallium. Based on the U.S. Environmental Protection Agency's ("EPA's") definition of beneficiation, Hecla has concluded that the activities at the Facility constitute beneficiation operations. Given preamble language in the September 1, 1989 final rule on the mining waste exclusion, however, some uncertainty may exist concerning the regulatory status of the acid leaching operation at the Facility. Consequently, Hecla is seeking EPA's confirmation of Hecla's conclusion that the leaching operation at the Facility is a beneficiation operation. Hecla needs written confirmation from EPA because of the obvious risks and burdens associated with an after-the-fact determination to the contrary. Therefore, this letter (1) provides a summary of the Facility's operation, the materials used and the products produced; (2) describes why the acid leaching operation is a

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May 8, 1990  
Page 2

beneficiation operation; and (3) seeks a written confirmation from EPA of Hecla's conclusion.

Description of the Facility's Operation.

Enclosed you will find a summary and flowsheet of the Facility's milling operation for recovery of copper, sodium germanate and gallium. As noted in the summary and on the flowsheet, the basic operational steps are as follows:

1. The ore is mixed with water and then crushed in a ball mill. The ground slurry overflows out of the ball mill over a vibrating screen, which separates large pieces of rock from the slurry.

2. The ground slurry then goes through a series of acid leaching circuits. Between each circuit, the slurry flows into a thickener tank. The overflow solution from the first thickener tank is sent to the solvent extraction circuits to remove the various metals. The solvent extraction circuits are described below. The slurry that does not go to the solvent extraction circuits is subjected to further leaching and ultimately is sent to a belt filter, which washes the material and separates the filtrate, which is utilized in the leaching operation, from the tailings. The tailings go to the neutralization circuit and then into a tailings pond.

3. The overflow solution from the first thickener passes through a clarifier and then through a series of recovery systems. The recovery systems use solvent extraction and electrowinning mechanisms to extract the copper, gallium and sodium germanate, respectively. The waste material produced during the extraction processes is neutralized. This treated material is mixed with the tailings during neutralization and then sent to a tailings pond.

To summarize, the following activities occur at the Facility: grinding, washing, sorting, filtration, solvent extraction, electrowinning and precipitation. Based on EPA's definition of beneficiation, as set forth in the January 23, 1990 final rule, Hecla concludes that these are activities EPA has determined to constitute beneficiation. See 55 Fed. Reg. 2322,

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Page 3

2353 (Jan. 23, 1990).<sup>1/</sup> Given the language in the September 1, 1989 final rule that operations using acid may in some instances be processing operations, the only activity of potential regulatory concern at the Facility is the acid leaching operation.

The Leaching Operation is a Beneficiation Operation.

After a careful review of the proposed and final mining waste exclusion rules, Hecla concludes that the Facility's leaching operation falls within the definition of beneficiation. Hecla bases this conclusion on the following: (1) the leaching operation concentrates the valuable mineral constituents; (2) the solid waste stream generated during the leaching operation is earthen in character and is physically and chemically similar to the ore from the Apex Mine, except that the valuable mineral constituents have been removed; and (3) the leaching operation is exactly the type of activity EPA envisioned as constituting beneficiation.

- 
- 1/ The list of beneficiation activities set forth in the January 23, 1990 final rule includes the following:

Crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

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1. The Leaching Operation Concentrates the Valuable Mineral Constituents.

Until recently, the distinction between the activities that constitute beneficiation and the activities that constitute processing was unclear. In attempts to clarify this distinction, EPA has on several occasions modified the definition of beneficiation and the activities it considers beneficiation. See, e.g., 53 Fed. Reg. 41288 (Oct. 20, 1988); 54 Fed. Reg. 15316 (Apr. 17, 1989); and 55 Fed. Reg. 2322 (Jan. 23, 1990). In the September 1, 1989 final rule on the mining waste exclusion, however, EPA stated "that, both functionally and legally, the most appropriate definition of beneficiation for use in distinguishing between beneficiation and processing is the definition used in the December 1985 Report to Congress (RTC) on wastes from extraction and beneficiation of ores and minerals." 54 Fed. Reg. 36592, 36617-18 (Sept. 1, 1989). In adopting the September 1, 1989 final rule, EPA concluded that it should broaden its regulatory definition to encompass all activities covered by the RTC. As EPA noted, the RTC defines beneficiation as "'the treatment of ore to concentrate its valuable constituents'." 54 Fed. Reg. at 36618 (citing the RTC at D-1).

Concentrating the valuable mineral constituents is exactly what occurs during the Facility's leaching operation. Therefore, this criterion supports Hecla's conclusion that the Facility's leaching operation is a beneficiation operation.

2. The Solid Waste Stream Generated During the Leaching Operation is Earthen in Character and is Physically and Chemically Similar to the Ore.

As EPA noted in the September 1, 1989 final rule, one distinction between beneficiation and processing is the nature of the waste stream generated by each. 54 Fed. Reg. at 36619. Specifically, EPA stated the following:

Most beneficiation processes . . . generate high volume solid waste streams that are essentially earthen in character. Despite the fact that valuable constituents have been removed, the remaining material is often physically and chemically similar to the material (ore or mineral) that entered the operation, except that particle size reduction has often occurred.

Id.

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As noted above and described in more detail in the enclosed summary, the leaching operation generates a liquid component, which contains the valuable mineral constituents, and a solid component (or tailings). The liquid component or solution continues through the Facility's other beneficiation activities (e.g., solvent extraction and electrowinning). The tailings are washed, filtered (to remove any remaining solution) and eventually placed in the tailings ponds. The tailings are earthen in character. Furthermore, the physical and chemical composition of the tailings is similar to the ore that was shipped to the Facility, except that the valuable mineral constituents have been removed. Accordingly, the "nature of the waste stream" criterion provides additional support for Hecla's conclusion that the Facility's leaching operation constitutes beneficiation.

3. The Leaching Operation is the Type of Activity EPA Envisioned as Constituting Beneficiation.

In preparing the RTC and in promulgating the mining waste exclusion rules, EPA considered leaching activities to fall within the beneficiation category and considered the wastes generated during the leaching activities to constitute beneficiation waste. For example, EPA noted in the September 1, 1990 final rule that "the RTC explicitly includes leaching operations as an integral part of the extraction and beneficiation domain. . . ." 54 Fed. Reg. at 36618 (citing the RTC at 2-16, D-4). See also 54 Fed. Reg. at 36619 ("EPA does not wish to include operations already established to be beneficiation operations (e.g., leaching, phosphate rock beneficiation) within the domain of mineral processing. . . ."); and 54 Fed. Reg. 15316, 15324 (Apr. 17, 1989) ("EPA has clearly considered leaching to be a beneficiation operation. . . ."). Finally, the list of beneficiation activities in the January 23, 1990 and September 1, 1990 final rules explicitly includes vat and tank leaching. See 55 Fed. Reg. 2322, 2353 (Jan. 23, 1990); and 54 Fed. Reg. 36592, 36641 (Sept. 1, 1990). Because the Facility's leaching operation is a vat and tank leaching operation, it constitutes beneficiation.

Conclusion.

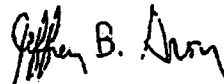
Because the leaching operation at the Facility concentrates the valuable mineral constituents, generates a solid waste stream that is earthen in character and physically and chemically similar to the ore that enters the operation, and is precisely the type of operation included within EPA's

Mr. Terry Anderson  
Ms. Sylvia Lowrance  
May 8, 1990  
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beneficiation definition, Hecla concludes that the acid leaching operation at the Facility is a beneficiation operation. Given that some uncertainty about the regulatory status of the Facility's leaching operation may exist, however, Hecla requests that EPA provide a written confirmation of Hecla's conclusion.

If you have any questions concerning this letter or the enclosed materials, please contact one of us. In any case, we will contact you within a week to discuss the necessity and desirability of a meeting with you to provide any necessary clarification and to ensure an expeditious resolution of this matter.

Sincerely yours,



Jeffrey B. Groy  
Elizabeth H. Temkin  
for  
DAVIS, GRAHAM & STUBBS

cc: Michael B. White, Esq.  
✓ Larry Drew  
Larry Wapinsky  
Dan Derkics

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**EXHIBIT 2**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII

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DENVER, COLORADO 80202-2405

JUL 19 1990

RECEIVED

JUL 23 '90

Ref: 8HWM-RI

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Davis, Graham & Stubbs  
Attorneys at Law  
Suite 4700  
370 Seventeenth Street  
Denver, Colorado 80201-0185

CONTROL NUMBER 8HWM-90-86

Dear Mr. Groy and Ms. Temkin:

The U.S. Environmental Protection Agency, Region VIII has received your letter dated May 8, 1990, requesting EPA's confirmation of Hecla Mining Company's (Hecla) conclusion that the acid leaching activity occurring at Hecla's Apex Facility constitutes beneficiation under the RCRA regulations.

We have reviewed the information presented in your May 8th letter which prompted Hecla to reach its above stated conclusion. Based solely on this information, we agree that the acid leaching operation at the Apex facility constitutes beneficiation. Therefore, the waste generated from this operation is not a hazardous waste as defined by RCRA Subtitle C regulations. Please note that our conclusion is applicable only to the Apex facility and only if the acid leaching process is operated as described in your May 8th letter.

We may, of course, need to reconsider our evaluation of the status of this waste in light of newly received information or of newly promulgated RCRA regulations. In addition, EPA may wish to visit the facility at some time in the future to review the operations at the Apex facility in depth to develop data pertaining to the characterization of this operation as mineral beneficiation.

If you have any questions regarding this letter, please call Terry Brown at (303) 293-1823.

Sincerely yours,

Robert L. Duprey, Director  
Hazardous Waste Management Division



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L2-1

**EXHIBIT 3**

**AFFIDAVIT**

**STATE OF UTAH**

**County of Washington**

**ss.**

**Penny Bassett, being first duly sworn, deposes and states:**

**1. I am a resident of St. George, Utah. I am over eighteen (18) years of age and make this affidavit of my own personal knowledge.**

**2. I am currently the Safety and Environmental Coordinator for the Apex facility of OMG Americas, Inc. ("OMG Apex"), located outside St. George. I have had that position since approximately October, 1995, when OMG purchased the facility from its previous owners, Hecla Mining Company ("Hecla").**

**3. Before the closing, I served as Hecla's Safety and Environmental Coordinator, beginning in about November, 1994.**

**4. I previously worked as a lab technician at the facility for about nine months during 1989, before leaving the plant for another position. While I was a lab technician, I did not have responsibility for environmental compliance at the facility.**

**5. When I returned to the Hecla facility in November, 1994, the plant process involved making specialty chemicals from cobalt residues. My duties as Safety and Environmental Coordinator included coordination of safety and environmental procedures, making recommendations to site and corporate management, and implementing safety and environmental protocols. I am familiar with the laws and regulations governing hazardous waste handling and disposal, including the Resource Conservation and Recovery Act.**

**6. I have personal knowledge of Hecla's environmental policies and practices from approximately November, 1994 (when I became Safety and Environmental Coordinator) to**

1 October, 1995 (when the plant was sold to OMG). Any and all hazardous wastes generated as a  
2 result of Hecla's operations (primarily cobalt recovery) during this time were, to the best of my  
3 knowledge, properly manifested and transported off-site. As far as I know, no hazardous wastes  
4 were disposed of into any of the on-site surface impoundments.

5 7. I am generally aware that the United States Environmental Protection Agency  
6 ("EPA") has alleged that hazardous waste is present in a surface impoundment adjacent to the  
7 OMG Apex facility which Hecla still leases from the landowner, the Shivwits Band of the  
8 Paiute Tribe. The surface impoundment is generally called "Pond 2." I have personal  
9 knowledge of the materials placed into Pond 2 by Hecla during the time I was Safety and  
10 Environmental Coordinator, and do not believe any hazardous wastes were placed into Pond 2.

11  
12 Dated: January 19, 2000.

13  
14 Penny Bassett  
15 Penny Bassett

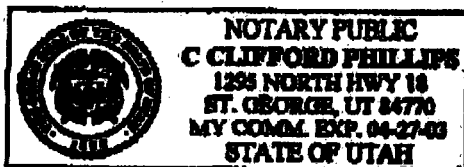
16  
17 Subscribed and sworn by me this 19 day of January, 2000.

18 Witness my hand and official seal.

19 My commission expires: 04-27-03

20  
21 C. Clifford Phillips  
22 Notary Public

23 [SEAL]



U590002  
22-1

**EXHIBIT 4**

## AFFIDAVIT

STATE OF Idaho                     )  
  ) ss.  
COUNTY OF Kootenai             )

I, Gary Gamble, being duly sworn, depose and state as follows:

1. I am over eighteen (18) years of age and understand the obligations of an oath.
2. I reside at 307 Ross Point Road in Post Falls, Idaho.
3. I am currently employed at the corporate office of Hecla Mining Company (Hecla), where I have held the positions of Environmental Engineer, Environmental Supervisor, Environmental Director-Metals Division, and Environmental Project Manager over the last 8 years. General duties include providing assistance to Hecla properties for compliance with Federal and State environmental regulations promulgated for implementation of the Resource, Conservation, and Recovery Act, as well as other Federal and State environmental laws.
4. Prior to my employment at the Hecla corporate office, I worked for Hecla at its former Apex facility located near St. George, Utah, and held the position of Environmental Coordinator/Industrial Hygienist from 1989 to 1991.
5. My duties while employed by Hecla at the Apex facility included review of applicable Federal and State environmental regulations, including the regulations promulgated to implement the Resource, Conservation, and Recovery Act, and development of facility environmental compliance programs and procedures to comply with the requirements of these regulations.
6. During my employment by Hecla at the Apex facility, its operations were limited to extraction and beneficiation of Gallium/Germanium ore.
7. To the best of my knowledge, the residues and waste materials generated in Hecla's Gallium/Germanium(Ga/Ge) operations were solely from mineral extraction and beneficiation, and therefore subject to the so-called Bevill exemption from regulation as hazardous waste under the Resource Conservation and Recovery Act (RCRA).
8. In 1990 Hecla ceased extraction and beneficiation of Ga/Ge ore at the Apex facility and in 1992 began a Cobalt recovery operation. During my employment with Hecla at the corporate office, operations at the Apex facility were limited to the recovery of Cobalt from other materials, including petroleum catalysts.

9. To the best of my knowledge, Hecla's later Cobalt recovery operation did not receive hazardous wastes that were disposed on-site at the Apex facility. Any and all hazardous wastes generated as a result of Hecla's Cobalt recovery operations were, to the best of my knowledge, properly manifested for transport off-site to a permitted hazardous waste treatment, storage and disposal facility.

10. To the best of my knowledge, during the course of my employment by Hecla at the corporate office, procedures were employed to test incoming materials for potential use as feed stock in Cobalt recovery operations. Similar procedures at the Apex facility were employed to test residues and waste materials generated in Cobalt recovery operations to determine if they were RCRA hazardous wastes. Materials that were unsuitable for use as feed stocks were returned to the shipper. Residues and wastes that tested hazardous were properly stored and transported for disposal off site at permitted facilities. To the best of my knowledge, no hazardous wastes from Cobalt recovery operations were disposed in any land-based impoundments at the Apex facility.

11. I am aware that the United States Environmental Protection Agency (EPA) has alleged that hazardous waste is present in a surface impoundment located adjacent to the OMG Apex facility for which Hecla is still the lessee and operator, which impoundment is generally referred to as Pond 2. I am generally familiar with the materials placed in Pond 2 by St. George Mining Company, prior to Hecla's ownership and operation of the Apex facility, and later by Hecla. I have no reason to believe that any hazardous waste is present in Pond 2.

Further affiant sayeth naught.

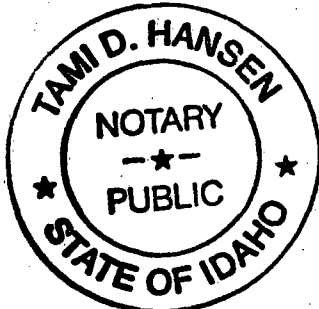
Dated: January 19, 2000.

Gary Gamble  
Gary Gamble

Subscribed and sworn by me this 19th day of January, 2000.

Witness my hand and official seal.

My commission expires: 9-12-2003



Tami D. Hansen  
Notary Public

[SEAL]